1953

Edna A. Christensen v. Bernard Munster et al : Brief of Respondents

Utah Supreme Court

Dudley Crafts; Thorpe Waddingham; Attorneys for Defendants and Respondents;

IN THE SUPREME COURT

of the

STATE OF UTAH

- - -

EDNA A. CHRISTENSEN,
Plaintiff and Appellant

v. Case No. 8,017

BERNARD MUNSTER, et al.,
Defendants and Respondents

- - - - - - -

RESPONDENTS' BRIEF

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RESPONDENTS BRIEF.

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STATEMENT OF FACTS

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The Respondents are in agreement with the Statement of Facts as set forth in the Appellant's brief and finds the facts as set forth sufficient for the purpose of this appeal with the exception that it is important to note that during the period 1943 to 1952 inclusive the property in question was assessed in the name of the Respondents and was NOT assessed at any time in the name of the Appellant, Edna A. Christensen. (R.10)

STATEMENT OF POINTS

The lower court correctly held that the payment made on October 13, 1948, by Charles F. Zitting, on behalf of the Appellant, did not prevent the Respondents from acquiring title by adverse possession. Rather the lower court was correct in holding the payment of the 1948 taxes when due and before delinquency, together with prompt payment of taxes for all other years 1943 thru 1942 inclusive, was payment of taxes sufficient to satisfy acquiring of title to the property by adverse possession, when done in connection with his open, nortorious, exclusive, and peaceable possession and use of the property for more than seven years prior to commencement of the action in the lower court.

ARGUMENT

It is Respondent's position that when taxes for any given year are assessed in the

name of an adverse possessor holding under color of title and such taxes are paid when due and before delinquency by such adverse possessor, that the payment of the amount due for taxes in the same year by the owner of the land or by an agent in the owners behalf is not sufficient, standing alone, to prevent the adverse possessor from acquiring title by adverse possession.

Respondents agree with the statement in Appellant's brief that there are two classes of statutes relating to payment of taxes as a condition to acquiring title by adverse possession, However, as pointed out on Page 5 of Appelant's brief the difference in the two classes of statutes does not affect the question involved in this appeal. It is important to realize, however, that some statutes such as Illinois have both classes of statutes, (Illinois Statute Annotated Chapter 83-Section 6& 7) and that

the Illinois Statute pertaining to payment of taxes on "vacant and unoccupied" lands by one holding under color of title as distinguished from the Illinois Statute pertaining to payment of taxes on lands which the adverse holder under color of title has taken possession of, has an express affirmative provision therein as follows:

> "....Provided, however, if any person, having a better paper title to said vacant and unoccupied land, shall, during the said term of seven years pay the taxes assessed on said land for any one or more years of the said term of seven years, then and in that case such taxpayer, his heirs and assigns, shall not be entitled to benefit of this section."

Eight of the eleven cases cited in the body of Appellant's brief as sustaining Appellant's point of view are Illinois cases and at least one of such cited cases involves VACANT AND UNOCCUPIED LAND. (Osborne v. Searles, 40 NE 542, 156 Ill.98).

Before proceeding with an analysis of the decisions on the point involved in this

appeal some mention should be made as to the purpose of the provision requiring payment of taxes in statutes concerning adverse possession. On this point the courts are not in agreement as to the purpose of the provision requiring payment of taxes, but there is support for the view that the primary purpose of such requirement is to protect governmental units from loss of revenue rather than to protect tax-delinquent owners against loss of their property. (Cofield v. Furry 19 Ill. 183) This is also the view adopted by the lower court in its Memorandum of Decision. If this view, which the Appellant urges on this Court, is correct, it should have an important bearing on the construction to be placed upon the statutory requirement that an adverse claimant of real property prove payment of taxes for the statutory period. As pointed out by the California Court in the case of Cavanaugh v. Jack-

son (34 Pac. 509):

> "whatever may be the object and purpose of the law, it should receive a reasonable construction, and to hold that priority of payment by the true owner of itself defeats the occupant's plea of the statute of limitations would be an unreasonable construction.
> ....Even if the collector should arbitrarily refuse to receive the taxes from the party in possession, if properly tendered, we do not think his title would be jeopardized by his failure to make the payment. There is reason in the law, and impossible things are not demanded."

Respondents recognize that there is a "split of authority" on the effect of "double payment" of taxes and that the Illinois Courts have taken the view that where a "double payment" of taxes for any given year has in fact occurred, that the first in point of time shall have priority and that this is true whether the first of such payments be made by the owner or the adverse possessor. (Osborne v. Pearles, Supra) The theory of the Illinois Courts is that payment of the tax by either party extinguishes

the debt due the taxing unit and that there is nothing remaining to be paid.

The only Utah Supreme Court case considering the problem of "double payment" of taxes, that has come to the attention of the Respondents is Rio Grande Western Railway Co. V. Salt Lake Investment Co. at 101 Pacific 586. This 1909 case, in a dictum posed a hypothetical situation as follows:

> "If the county assessor had assessed Lot 8 by one description to appellant as claimant, and by another, or by the same description, to Respondent as owner, it would then be a case of assessing the same property to two claimants, either one or both of whom could have paid the taxes. Under such circumstances the question would arise as to which one of the claimants, in contemplation of law, had paid the taxes."

Our Utah Supreme Court then stated that they favored the view of the California Courts that the first payment would be recognized as the legal payment of taxes on the theory that once paid the debt is discharged and Cited for authority as such view Carpenter v.

Lewis an 1897 California Supreme Court case. (50 Pac. 925) As will be pointed out later the case of Carpenter v. Lewis on which the Utah Court relied is no longer the law in California. The Respondents respectfully urge this Court to accept the rule of the later California decisions which will be discussed later in this brief, as being the better and more sensible rule.

It should be mentioned at this point that the Utah Statute pertaining to acquiring of property by adverse possession is copied from the California statutes relating to acquiring property by adverse possession. (Rio Grande Western Railway Co. v. Salt Lake Investment Co.) It would seem then that this Court should give great weight to the California decisions in interpreting the California statute relating to acquiring of title by adverse possession, and the Respondents respectfully urge this Court to do so.

In attempting to analyze the decision of the California Courts it is necessary to go into some little detail as to the facts in each particular case. The first case which deals with the problem of "double payment" of taxes and involving the problem of adverse possession is the case of Cavanaugh v. Jackson (99 Cal. 672, 34 P 509). In this 1893 case the taxes were assessed and paid by the adverse claimant for all of the years in question. For part of the years in question the taxes were assessed and paid by the owner of the property. Even though in some years the taxes had been assessed and paid by both the owner and the adverse claimant it was held that the adverse claimant prevailed.

The next California decision and the one relied on in the dictum of the Utah Court in Rio Grande Western Railway Co. v. Salt Lake Investment Co. as afore referred to, was the case of Carpenter v. Lewis found at 50 Pac. 925. In this case decided in 1897, the taxes

were assessed to the record owner only and in all but two of the years in question paid by the record owner first. The taxes on the property was never assessed to the adverse claimant. The Court held that title remained in the record owner, distinguishing this case from the case of Cavanaugh v. Jackson by pointing out that in Cavanaugh v. Jackson the adverse claimant had the taxes ASSESSED AND PAID in his name, while in the case of Carpenter v. Lewis the taxes were ASSESSED to the record owner only. Thus it seems that at this point the California decisions put emphasis not on who paid the taxes first but on the point of to whom were the taxes assessed.

The next California decision on the question involved here was the 1909 case of Owsly v. Watson (156 Cal. 401, 104 P 982). In this case the taxes were assessed and paid by both the owner and the adverse claimant. It is not clear whether the owner or the adverse claimant paid the taxes first in each of the years held that the ad-

verse claimant should prevail and distinguished the case of Carpenter v. Lewis by pointing out that in that case only the true owner was assessed for taxes. Again the California court seems to stress that both assessment and payment are the deciding factor in these cases rather than priority of payment.

In 1924 the California Supreme Court in the next of the decisions involving "double payment" of taxes decided the case of Fereria Farms Corp. v. Sinus (230 P. 976). Again as in the preceding case of Owsly v. Matson the taxes on the property were assessed and paid by both the owner and the adverse claimant. Citing numerous California decisions the court stated:

> "It seems to be now definitely settled, that, where there is a double taxation and a double payment of taxes upon the land, the claimant to title by adverse possession has fully complied with the law when he has paid the taxes upon the land even though they have also been paid by the holder of the record title thereto."

Again in Kennick v. Cline et al. (150

2nd 955) the California Court said:

> "The fact that disputed property may have been doubly assessed by public authorities both against the record owner and the adverse claimant could not serve to destroy claimants adverse possession on the theory that he did not pay all of the taxes assessed against the property."

Summarizing the California decisions to date on the question of "double payment" of taxes in cases involving title to land by reason of adverse possession, it would seem to be the settled rule in California that if the taxes are ASSESSED AND PAID by both the owner and the adverse claimant, that the adverse claimant will prevail and that priority of payment will not be the deciding factor. By analogy, it would certainly seem that an owner who paid the taxes which were not assessed in his name but were assessed to and paid by the adverse claimant could not in California break the running of the statute requiring payment of taxes as a pre-requisite to acquiring title to land by adverse possession.

A case almost identical with the situation in the case at hand is Thompson v. Weisman, (98 Tex. 170, 82 SE 503) the court held that even though the owner paid the taxes on the property each year before the adverse claimant did that the adverse claimant should prevail. In this case taxes were ASSESSED AND PAID in the name of the adverse claimant. It would seem that this decision follows the reasoning of the California decisions.

The Idaho Supreme Court, in a dictum Cramer v. Walker, (130 P. 1002, 23 Ida. 495) as acknowledged and quoted from in the Appellant's brief, also seems to favor the California view and cites the California cases of Cavanaugh v. Jackson and Carpenter v. Lewis with approval:

> "It seems that each party has paid the taxes every year since that time. Sometimes one party has paid the taxes first and other years the other party has been the first to make payment. It is not material to the determination of this case that we determine the rule of law which should apply in such cases.

It seems however, to us that the rule announced by Mr. Justice Harrison in Cavanaugh v. Jackson, 99 Cal. 672, 34 Pac. 509, is the correct rule to be applied in such cases. The same rule was adopted and followed in Carpenter v. Lewis, 119 Cal. 18, 50 Pac. 925."

CONCLUSION

The Respondent's submit that the reasoning of the California decisions as supported by the Idaho and Texas decisions are correct and respectfully urge that this Court adopt such reasoning in this case. If this Court should reverse the decision of the lower court and hold that even though the taxes for the year 1948 were ASSESSED AND PAID in the name of the Respondents, when due and before delinquency, that Appellant could defeat his claim of payment of 1948 taxes by the simple expedient of paying the amount due at a date earlier than the payment of Respondents, (even though taxes were not assessed in Appellant's name) the statement of the California Supreme Court in Cavanaugh v. Jackson, supra, would certain-

ly be applicable:

> "If such were the law, upon the first day that taxes became due and payable, it would result in a scramble at or a race to the tax collector's office by the respective parties to secure priority of payment. The destruction of old title and the creation of new ones would thus be dependent upon the strongest man or the fleetest horse."

We submit that the judgment of the lower court is correct and should be sustained.

Respectfully Submitted,

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